IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Writ Petition No. 96 of 2006 (M/B)

1. Dr. Tej Pal Singh S/o Late Sri Raj Singh,
   R/o House No. 221, P.S. Gang Nahar,
   Purani Tehsil Roorkee, District Haridwar.
2. Sri Rakesh Kumar Dhiman S/o Sri Chandra Bhan Dhiman,
   Business Survey Instrument,
   Owner of Padam Engineering Corporation,
   House No. 94, Purani Tehsil,
   District Haridwar. …….. Petitioners

Versus

1. State of Uttaranchal through Secretary,
   Ministry of Urban Development,
   Secretariat, Uttaranchal, Dehradun.
2. District Magistrate, Haridwar.
3. Sub Divisional Magistrate,
   Roorkee, District Haridwar.
4. Municipal Board, Roorkee,
   District Haridwar,
   Through its Chairman. …….. Respondents

None for the petitioners.
Mr. U.P.S. Negi, Addl. Advocate General for respondents Nos. 1 to 3.
Mr. Parikshit Saini, Advocate for respondent No. 4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Petitioners' counsel absent.

Mr. U.P.S. Negi, Addl. Advocate General for respondents Nos. 1 to 3.

Mr. Parikshit Saini, Advocate for respondent No. 4.

They are heard.

2. The petitioners have filed this writ petition styled as 'Public Interest Litigation' for the following reliefs:

> "1. Issue a writ, order or direction in the nature of mandamus or any other writ or direction to the respondents no. 1 to 4 to demolish the illegal construction made by the unauthorized persons on the both banks of the public drain and over it, after covering the drain, originating from the Rampur Road and passing through Purani Tehsil, Roorkee and finally merging into the Solani river, Gang Nahar, Roorkee.
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> 2. Issue a writ, order or direction in the nature of mandamus or any other writ or direction to the respondents no. 1 to 4 to perform their statutory duties provided under the Municipalities Act, 1916 to ensure that the said public drain originating from the Rampur Road and passing through the Purani Tehsil Roorkee is constructed and converted into a cemented public drain of the width of 22 feet recorded in the Government and Revenue record and Municipal Board Roorkee takes proper steps to clean the said public drain passing through Purani Tehsil, Roorkee.
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> 3. Issue any other relief which this Hon'ble Court may deem fit and proper, may kindly be provided to the petitioners in the general welfare of the local residents of the residential area of Purani Tehsil, Roorkee.
>
> 4. Award the cost of writ petition to the petitioners."

3. The petitioners, in substance, are seeking a direction to the respondents to demolish the unauthorised constructions on both the banks of the public drain originating from the Rampur Road and passing through Purani Tehsil, Roorkee and finally merging into the Solani River, Roorkee.

4. Respondent No. 4 Municipal Board, Roorkee, has filed counter affidavit. Paras 3, 4, 6 & 8 of the said counter affidavit read as follows:

> "3. That the contents of para no. 2 of the Writ Petition are denied. It is pertinent to mention here that the width is not narrowed down as mentioned in the para 2 of the Writ Petition. However, it is pertinent to mention here that on some portion of the drain encroachments are there. That is pertinent to mention here

that no casualty has ever happened due to the drain, further more the representation has not been submitted to the answering respondent. Thus the deponent cannot answer about the same.

4. That the contents of para no. 3 of the Writ Petition are denied as such answering respondent has no knowledge of the news item. However, the departmental action as regard to the encroachment has been taken and a list of encroachers has been prepared after due inspection by the Junior Engineer of the Nagar Palika Parishad Roorkee and as many as 32 person were found as encroachers, who has encroached upon the drain. A list of encroachers is annexed herewith as ***Annexure No. CA-I*** to this Affidavit.

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6. That the contents of para no. 5 of the Writ Petition are denied. A complete action has been taken by the answering respondent as such a survey was conducted to earmark the encroachers and it is pertinent to mention here that the drain was a (Kaccha one), however at present construction work is on full swing, as such all most the construction work of the said drain is on completion. However as regard to the action against the encroachers is concern, the answering respondents are in progress to make a action plan against the encroachers.

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8. That the contents of para no. 7 of the Writ Petition are vehemently denied, as such answering respondent has conducted a survey through the Junior Engineer Nagar Palika Parishad, Roorkee to earmark the encroachers and list has been prepared, thus the answering respondents are in progress against the encroachers however, the same may take some time."

5. Thus, it is apparent that respondent No. 4 Municipal Board, Roorkee has admitted in its counter affidavit that there are encroachments on the banks of the Nala. The Municipal Board has further stated in its counter affidavit that the Municipal Board proposes to take appropriate action against the encroachers for removal of the encroachments.

6. As the Municipal Board has already identified the encroachments and it proposes to take appropriate action for removal of the encroachments, no further direction in this writ petition filed as 'Public Interest Litigation', now, is necessary. We, however, deem it

proper to observe that the action proposed to be taken by the Municipal Board for removal of the encroachments shall be taken to a logical and expeditiously in accordance with law.

7. With the above observation, the writ petition stands disposed of.

8. With the above order, CLMAs Nos. 502 of 2006 and 8206 of 2006 also stand disposed of.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
28.08.2006 28.08.2006

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